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Attorneys for Debtors
Michael Howard Lilligh and Stefanie Judith Lilligh

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE MICHAEL HOWARD LILLIGH AND)	Case No.: 12-48816-RLE13
)	
STEFANIE JUDITH LILLIGH,)	CHAPTER 13
)	
,)	DEBTORS' OBJECTION TO CLAIM 2-1 OF
)	THE INTERNAL REVENUE SERVICE
)	
Debtors.)	

The Debtors, Michael Howard Lilligh and Stefanie Judith Lilligh, by and through their attorney of record, hereby object to claim 2-1 of the Internal Revenue Service, a copy of which is attached as Exhibit A of this Objection, and move for an order from this Court sustaining this objection and allowing the Claim as a secured claim in the amount of \$23,870, and as an unsecured, non-priority claim in the amount of \$13,637.42, on the following grounds:

A. As set forth in the DECLARATION OF DEBTORS IN SUPPORT OF DEBTORS' MOTION TO VALUE REAL PROPERTY COLLATERAL OF THE INTERNAL REVENUE SERVICE, MOTION TO VALUE PERSONAL PROPERTY COLLATERAL OF THE INTERNAL REVENUE SERVICE, MOTION TO VALUE REAL PROPERTY COLLATERAL OF THE FRANCHISE TAX BOARD, MOTION TO VALUE PERSONAL PROPERTY COLLATERAL OF THE FRANCHISE TAX BOARD, OBJECTION TO CLAIM OF THE INTERNAL REVENUE SERVICE AND OBJECTION TO CLAIM OF THE CALIFORNIA FRANCHISE TAX BOARD (hereafter "Declaration"), filed in support of this Objection, the value of all of the

1 real and personal assets secured by the IRS lien (except for the Debtors' interest in the Debtor's
2 401k plan) after taking into account any senior liens is \$23,870.

3 B. As set forth in the Declaration, the 401k plan at issue was not in pay off status at the time the
4 petition was filed and said plan included the anti-alienation provision required under ERISA. As
5 such, pursuant to *United States Internal Revenue Service v. Donald Snyder*, 343 F.3d 1171 (9th
6 Cir. 2003), the anti-alienation provision which prevented the debtor's interest in the pension plan
7 from becoming property of the estate under section 541(c)(2) also prevents the Service from
8 having a secured claim under section 506(a). *United States v. Snyder*, 343 F.3d 1171, 1179 (9th
9 Cir. 2003). As such, the value of the tax lien of the IRS and therefore its secured claim is limited
10 to the value of the other collateral (i.e. \$23,870).

11 C. As set forth in the Declaration, the unsecured portion of the claim of the Internal Revenue
12 Service is not entitled to priority status, since: i) the income taxes for which the claim is based first
13 came due more than three years before the bankruptcy was filed and were assessed more than 240
14 days before the bankruptcy petition was filed; ii) the income tax returns upon which the income
15 taxes are based were filed more than two years before the bankruptcy petition was filed and before
16 any substitute for returns were filed by the Internal Revenue Service; and, iii) there was no fraud
17 or tax evasion committed by the Debtors with respect to the tax return at issue or income taxes
18 owed.

19 Based on the above, the Debtors pray that the Court SUSTAIN their objection to claim 2-1 of the
20 Internal Revenue Service and allow the claim as a secured claim in the amount of \$23,870 and an
21 unsecured, non-priority claim in the amount of \$13,637.42.

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23 Respectfully Submitted,

24 Dated: August 31, 2017

/s/ Eric M. Nixdorf
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